IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 10608 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

USHABEN MOTILAL PRAJAPATI (KUMBHAR)

Versus

EXECUTIVE ENGINEER (O & M)

Appearance:

MR MB PARIKH for Petitioner

MR SP HASURKAR for Respondent No. 2

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 11/12/2000

ORAL JUDGEMENT

Rule, service of which is waived by Mr. Hasurkar,learned advocate appearing for the respondents. With the consent of the learned advocates for the parties, the matter is taken up for final hearing today

itself.

The petitioner herein is the widow of Motilal Prajapati who was serving in the respondent board and who died on 7.2.1994 during the course of employment. The petitioner, being the widow of deceased employee, has applied on 3.11.1995 for the post of Class III or IV on compassionate grounds which request was rejected by the authority on 7.12.1998 after more than three years on the ground that her request has been rejected only on the ground that as she is the second wife of the deceased employee, she is not entitled to compassionate employment. She has, therefore, made representation dated 30.10.1999 stating everything regarding her marriage as well as the rights given up by the first wife of her deceased husband. That representation has also been rejected by the respondents. The petitioner has also pointed out that her husband had filled up nomination form dated 4th February, 1992 wherein the petitioner was nominated as his legal heir and representative and it was also approved by the respondent authorities and payment of gratuity has also been made to the petitioner herein by issuing cheque in her favour.

Learned advocate Mr. Parikh appearing for the petitioner has submitted that while deciding the application of the petitioner for appointment on compassionate ground, the respondent authorities have not taken into account that the payment of gratuity has been made in her favour and even her name was there in the nomination form filled up by her late husband. He has further submitted that the respondent board has issued one resolution dated 10th March, 2000 which states that in case of difficulty about finding of legal heirs, nomination form filled in by the late employee has to be taken into consideration. He has, therefore, submitted that the nomination form filled in favour of the petitioner by her late husband, deceased employee itself is the cogent evidence. He has therefore submitted that the rejection of her application only on the ground that she is the second wife of the deceased employee and, therefore, her claim has been rejected.

I have heard the learned advocates for the parties. Learned advocate Mr. Hasurkar for the respondent Board has submitted that the respondent board is having a policy by way of GSO No. 295 wherein it has been mentioned that in case of any employee died during the course of service in the board, one dependent child or spouse would be employed by the Board on any vacant post for which such dependent holds necessary

qualification/experience. This benefit would not be available in case where one or more members of the family of the deceased employee is/are already employed within or outside the Board. This is the clear policy laid down by the respondent Board wherein no such provision has been made that if the deceased employee is having the second wife, then such second wife shall not be entitled to such benefit and the fact remains that the first wife of the deceased employee has, by affidavit dated 30th May, 1998, in terms made it clear that all the benefits which are available because of death of her husband may be given to the petitioner Ushaben and she is not claiming benefits or any right because of the death of her husband. One aspect is also required to be examined that in nomination form also, name of the petitioner has been filled up by the deceased employee, husband of the petitioner and the respondent board has accepted the same and has also granted benefits of gratuity to the petitioner and at that time, the respondent board has not raised such an objection that she will not be given such benefits as she is the second wife of the deceased employee of the board. Therefore, the petitioner is entitled to such benefit under the scheme if she is otherwise entitled within the four corners of the scheme.

Considering all these aspects of the matter, the petition is allowed. The impugned order dated 7th August, 2000 annexure "E" passed by the respondent Board is hereby quashed and set aside with a direction to the respondent Board to reconsider the case of the petitioner in light of the General Standing Order No. 295 without being influenced of the fact that the petitioner is the second wife of the deceased employee and to consider the case of the petitioner as if the petitioner is legally entitled to the benefit of compassionate appointment as per GSO No. 295 within two months from the date of receipt of certified copy of this order and to pass appropriate orders in accordance with law and to communicate the same to the petitioner. If any adverse orders will be passed by the respondent Board, it will be open for the petitioner to challenge the same before the appropriate forum in accordance with law. Rule is made absolute in terms indicated hereinabove with no order as to costs.

11.12.2000. (H.K. Rathod,J.)

Vyas